

ASSESSMENT AREA AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Fred R. Hunsaker

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill modifies provisions relating to assessment areas.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ clarifies which improvements a notice of a proposed designation resolution or ordinance may make provision for;
- ▶ modifies which owners of property may file a protest to a proposed assessment area or assessment;
- ▶ modifies the conditions under which a local entity may designate an assessment area;
- ▶ modifies the conditions under which a local entity may add to a designated assessment area;
- ▶ modifies items that can be included in the levy of an assessment;
- ▶ modifies the possible makeup of a board of equalization for assessment purposes;
- ▶ specifies a time within which a board of equalization must mail a copy of the board's final report;
- ▶ allows local entity to publish a summary of an adopted assessment resolution or ordinance rather than the resolution or ordinance itself;
- ▶ modifies a provision relating to an amendment of an assessment resolution or



ordinance that results in an increase of an assessment;

- ▶ includes capitalized interest in the items for which proceeds of bond anticipation notes may be used;

- ▶ authorizes a local entity to include interest accruing on bond anticipation notes in the cost of improvements;

- ▶ includes assessments in the list of items from which warrants or bond anticipation notes are to be paid;

- ▶ modifies a provision relating to how assessment bonds are to be issued;

- ▶ includes interim warrants in a provision requiring the local entity to provide for the retirement of the obligation; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-42-102, as enacted by Laws of Utah 2007, Chapter 329

11-42-202, as enacted by Laws of Utah 2007, Chapter 329

11-42-203, as enacted by Laws of Utah 2007, Chapter 329

11-42-205, as enacted by Laws of Utah 2007, Chapter 329

11-42-207, as enacted by Laws of Utah 2007, Chapter 329

11-42-301, as enacted by Laws of Utah 2007, Chapter 329

11-42-401, as enacted by Laws of Utah 2007, Chapter 329

11-42-403, as enacted by Laws of Utah 2007, Chapter 329

11-42-404, as enacted by Laws of Utah 2007, Chapter 329

11-42-410, as enacted by Laws of Utah 2007, Chapter 329

11-42-602, as enacted by Laws of Utah 2007, Chapter 329

11-42-603, as enacted by Laws of Utah 2007, Chapter 329

11-42-605, as enacted by Laws of Utah 2007, Chapter 329

11-42-702, as enacted by Laws of Utah 2007, Chapter 329

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **11-42-102** is amended to read:

11-42-102. Definitions.

(1) "Adequate protests" means timely filed, written protests under Section 11-42-203 that represent at least 50% of the frontage, area, taxable value, fair market value, lots, number of connections, or equivalent residential units of the property proposed to be assessed, according to the same assessment method by which the assessment is proposed to be levied, after eliminating:

(a) protests relating to:

(i) property that has been deleted from a proposed assessment area; or

(ii) an improvement that has been deleted from the proposed improvements to be provided to property within the proposed assessment area; and

(b) protests that have been withdrawn under Subsection 11-42-203(3).

(2) "Assessment area" means an area, or, if more than one area is designated, the aggregate of all areas within a local entity's jurisdictional boundaries that is designated by a local entity under Part 2, Designating an Assessment Area, for the purpose of financing the costs of improvements, operation and maintenance, or economic promotion activities that benefit property within the area.

(3) "Assessment bonds" means bonds that are:

(a) issued under Section 11-42-605; and

(b) payable in part or in whole from assessments levied in an assessment area, improvement revenues, and a guaranty fund or reserve fund.

(4) "Assessment fund" means a special fund that a local entity establishes under Section 11-42-412.

(5) "Assessment lien" means a lien on property within an assessment area that arises from the levy of an assessment, as provided in Section 11-42-501.

(6) "Assessment method" means the method by which an assessment is levied against property, whether by frontage, area, taxable value, fair market value, lot, number of connections, equivalent residential unit, or any combination of these methods.

(7) "Assessment ordinance" means an ordinance adopted by a local entity under

Section 11-42-404 that levies an assessment on benefitted property within an assessment area.

(8) "Assessment resolution" means a resolution adopted by a local entity under Section 11-42-404 that levies an assessment on benefitted property within an assessment area.

(9) "Benefitted property" means property within an assessment area that directly or indirectly benefits from improvements, operation and maintenance, or economic promotion activities.

(10) "Bond anticipation notes" means notes issued under Section 11-42-602 in anticipation of the issuance of assessment bonds.

(11) "Bonds" means assessment bonds and refunding assessment bonds.

(12) "Commercial area" means an area in which at least 75% of the property is devoted to the interchange of goods or commodities.

(13) "Connection fee" means a fee charged by a local entity to pay for the costs of connecting property to a publicly owned sewer, storm drainage, water, gas, ~~[telecommunications]~~ communications, or electrical system, whether or not improvements are installed on the property.

(14) "Contract price" means:

(a) the cost of acquiring an improvement, if the improvement is acquired; or

(b) the amount payable to one or more contractors for the design, engineering, inspection, and construction of an improvement.

(15) "Designation ordinance" means an ordinance adopted by a local entity under Section 11-42-206 designating an assessment area.

(16) "Designation resolution" means a resolution adopted by a local entity under Section 11-42-206 designating an assessment area.

(17) "Economic promotion activities" means activities that promote economic growth in a commercial area of a local entity, including:

(a) sponsoring festivals and markets;

(b) promoting business investment;

(c) helping to coordinate public and private actions; and

(d) developing and issuing publications designed to improve the economic well-being of the commercial area.

(18) "Equivalent residential unit" means a dwelling, unit, or development that is equal

to a single-family residence in terms of the nature of its use or impact on an improvement to be provided in the assessment area.

(19) "Governing body" means:

(a) for a county, city, or town, the legislative body of the county, city, or town;

(b) for a local district, the board of trustees of the local district; and

(c) for a special service district:

(i) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17A-2-1326; or

(ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17A-2-1326.

(20) "Guaranty fund" means the fund established by a local entity under Section 11-42-701.

(21) "Improved property" means property proposed to be assessed within an assessment area upon which a residential, commercial, or other building has been built.

(22) "Improvement":

(a) means any publicly owned infrastructure, system, or other facility that:

~~[(a)]~~ (i) a local entity is authorized to provide; or

~~[(b)]~~ (ii) the governing body of a local entity determines is necessary or convenient to enable the local entity to provide a service that the local entity is authorized to provide[-]; and

(b) includes facilities in an assessment area, including a private driveway, an irrigation ditch, and a water turnout, that:

(i) can be conveniently installed at the same time as an infrastructure, system, or other facility described in Subsection (22)(a); and

(ii) are requested by a property owner on whose property or for whose benefit the infrastructure, system, or other facility is being installed.

(23) "Improvement revenues":

(a) means charges, fees, impact fees, or other revenues that a local entity receives from improvements; and

(b) does not include revenue from assessments.

(24) "Incidental refunding costs" means any costs of issuing refunding assessment bonds and calling, retiring, or paying prior bonds, including:

- 152 (a) legal and accounting fees;
- 153 (b) charges of [~~fiscal agents~~] financial advisors, escrow agents, certified public
- 154 accountant verification entities, and trustees;
- 155 (c) underwriting discount costs, printing costs, the costs of giving notice;
- 156 (d) any premium necessary in the calling or retiring of prior bonds;
- 157 (e) fees to be paid to the local entity to issue the refunding assessment bonds and to
- 158 refund the outstanding prior bonds;
- 159 (f) any other costs that the governing body determines are necessary or desirable to
- 160 incur in connection with the issuance of refunding assessment bonds; and
- 161 (g) any interest on the prior bonds that is required to be paid in connection with the
- 162 issuance of the refunding assessment bonds.
- 163 (25) "Installment payment date" means the date on which an installment payment of an
- 164 assessment is payable.
- 165 (26) "Interim warrant" means a warrant issued by a local entity under Section
- 166 11-42-601.
- 167 (27) "Jurisdictional boundaries" means:
- 168 (a) for a county, the boundaries of the unincorporated area of the county; and
- 169 (b) for each other local entity, the boundaries of the local entity.
- 170 (28) "Local district" means a local district under Title 17B, Limited Purpose Local
- 171 Government Entities - Local Districts.
- 172 (29) "Local entity" means a county, city, town, special service district, [~~or~~] local
- 173 district, or other political subdivision of the state.
- 174 (30) "Local entity obligations" means assessment bonds, refunding assessment bonds,
- 175 interim warrants, and bond anticipation notes issued by a local entity.
- 176 (31) "Mailing address" means:
- 177 (a) a property owner's last-known address using the name and address appearing on the
- 178 last completed real property assessment roll of the county in which the property is located; and
- 179 (b) if the property is improved property:
- 180 (i) the property's street number; or
- 181 (ii) the post office box, rural route number, or other mailing address of the property, if
- 182 a street number has not been assigned.

(32) "Net improvement revenues" means all improvement revenues that a local entity has received since the last installment payment date, less all amounts payable by the local entity from those improvement revenues for operation and maintenance costs.

(33) "Operation and maintenance costs":

(a) means the costs that a local entity incurs in operating and maintaining improvements in an assessment area, ~~[including]~~ whether or not those improvements have been financed under this chapter; and

(b) includes service charges, administrative costs, ongoing maintenance charges, and tariffs or other charges for electrical, water, gas, or other utility usage.

~~[(34) "Optional facilities":]~~

~~[(a) means facilities in an assessment area that:]~~

~~[(i) can be conveniently installed at the same time as improvements in the assessment area; and]~~

~~[(ii) are requested by a property owner on whose property or for whose benefit the improvements are being installed; and]~~

~~[(b) includes private driveways, irrigation ditches, and water turnouts:]~~

~~[(35)]~~ (34) "Overhead costs" means the actual costs incurred or the estimated costs to be incurred by a local entity in connection with an assessment area for appraisals, legal fees, filing fees, financial advisory charges, underwriting fees, placement fees, escrow, trustee, and paying agent fees, publishing and mailing costs, costs of levying an assessment, recording costs, and all other incidental costs.

~~[(36)]~~ (35) "Prior bonds" means the assessment bonds that are refunded in part or in whole by refunding assessment bonds.

~~[(37)]~~ (36) "Prior assessment ordinance" means the ordinance levying the assessments from which the prior bonds are payable.

~~[(38)]~~ (37) "Prior assessment resolution" means the resolution levying the assessments from which the prior bonds are payable.

~~[(39)]~~ (38) "Project engineer" means the surveyor or engineer employed by or private consulting engineer engaged by a local entity to perform the necessary engineering services for and to supervise the construction or installation of the improvements.

~~[(40)]~~ (39) "Property" includes real property and any interest in real property, including

water rights, and leasehold rights~~[-, and personal property related to the property]~~.

~~[(41)]~~ (40) "Property price" means the price at which a local entity purchases or acquires by eminent domain property to make improvements in an assessment area.

~~[(42)]~~ (41) "Provide" or "providing," with reference to an improvement, includes the acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and expansion of an improvement.

~~[(43)]~~ (42) "Public agency" means:

(a) the state or any agency, department, or division of the state; and

(b) a political subdivision of the state.

~~[(44)]~~ (43) "Reduced payment obligation" means the full obligation of an owner of property within an assessment area to pay an assessment levied on the property after the assessment has been reduced because of the issuance of refunding assessment bonds, as provided in Section 11-42-608.

~~[(45)]~~ (44) "Refunding assessment bonds" means assessment bonds that a local entity issues under Section 11-42-607 to refund, in part or in whole, assessment bonds.

~~[(46)]~~ (45) "Reserve fund" means a fund established by a local entity under Section 11-42-702.

~~[(47)]~~ (46) "Service" means water, sewer, storm drainage, garbage collection, library, recreation, communications or electric service, economic promotion activities, or any other service that a local entity is required or authorized to provide.

~~[(48)]~~ (47) "Special service district" means a special service district under Title 17A, Chapter 2, Part 13, Utah Special Service District Act.

~~[(49)]~~ (48) "Unimproved property" means property upon which no residential, commercial, or other building has been built.

~~[(50)]~~ (49) "Voluntary assessment area" means an assessment area that contains only property whose owners have voluntarily consented to an assessment.

Section 2. Section **11-42-202** is amended to read:

11-42-202. Requirements applicable to a notice of a proposed assessment area designation.

(1) Each notice required under Subsection 11-42-201(2)(a) shall:

(a) state that the local entity proposes to:

- 245 (i) designate one or more areas within the local entity's jurisdictional boundaries as an
246 assessment area;
- 247 (ii) provide an improvement to property within the proposed assessment area; and
- 248 (iii) finance some or all of the cost of improvements by an assessment on benefitted
249 property within the assessment area;
- 250 (b) describe the proposed assessment area by any reasonable method that allows an
251 owner of property in the proposed assessment area to determine that the owner's property is
252 within the proposed assessment area;
- 253 (c) describe, in a general way, the improvements to be provided to the assessment area,
254 including:
- 255 (i) the general nature of the improvements; and
- 256 (ii) the general location of the improvements, by reference to streets or portions or
257 extensions of streets or by any other means that the governing body chooses that reasonably
258 describes the general location of the improvements;
- 259 (d) a statement of the estimated cost of the improvements as determined by a project
260 engineer;
- 261 (e) a statement that the local entity proposes to levy an assessment on benefitted
262 property within the assessment area to pay some or all of the cost of the improvements
263 according to the estimated direct and indirect benefits to the property from the improvements;
- 264 (f) a statement of the assessment method by which the assessment is proposed to be
265 levied;
- 266 (g) a statement of the time within which and the location at which protests against
267 designation of the proposed assessment area or of the proposed improvements are required to
268 be filed and the method by which the number of protests required to defeat the designation of
269 the proposed assessment area or acquisition or construction of the proposed improvements are
270 to be determined;
- 271 (h) state the date, time, and place of the public hearing under Section 11-42-204;
- 272 (i) if the governing body elects to create and fund a reserve fund under Section
273 11-42-702, a description of how the reserve fund will be funded and replenished and how
274 remaining money in the reserve fund is to be disbursed upon full payment of the bonds;
- 275 (j) if the governing body intends to designate a voluntary assessment area, a property

owner consent form that:

(i) estimates the total assessment to be levied against the particular parcel of property;

(ii) describes any additional benefits that the governing body expects the assessed property to receive from the improvements; and

(iii) designates the date and time by which the fully executed consent form is required to be submitted to the governing body;

(k) if the local entity intends to levy an assessment to pay operation and maintenance costs or for economic promotion activities:

(i) a description of the operation and maintenance costs or economic promotion activities to be paid by assessments and the initial estimated annual assessment to be levied;

(ii) a description of how the estimated assessment will be determined;

(iii) a description of how and when the governing body will adjust the assessment to reflect current operation and maintenance costs or the costs of current economic promotion activities;

(iv) a description of the method of assessment if different from the method of assessment to be used for financing any improvement; and

(v) a statement of the maximum number of years over which the assessment for operation and maintenance or economic promotion activities will be levied; and

(l) if the governing body intends to divide the proposed assessment area into zones under Subsection 11-42-201(1)(b), a description of the proposed zones.

(2) A notice required under Subsection 11-42-201(2)(a) may contain other information that the governing body considers to be appropriate, including:

(a) the amount or proportion of the cost of the improvement to be paid by the local entity or from sources other than an assessment;

(b) the estimated amount of each type of assessment for the various improvements to be financed according to the method of assessment that the governing body chooses; and

(c) provisions for any ~~optional~~ improvements described in Subsection 11-42-102(22)(b).

(3) Each notice required under Subsection 11-42-201(2)(a) shall:

(a) (i) be published in a newspaper of general circulation within the local entity's jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at

least five but not more than 20 days before the deadline [~~under Section 11-42-203~~] for filing protests specified in the notice under Subsection (1)(g); or

(ii) if there is no newspaper of general circulation within the local entity's jurisdictional boundaries, be posted in at least three public places within the local entity's jurisdictional boundaries at least 20 but not more than 35 days before the deadline under Section 11-42-203 for filing protests; and

(b) be mailed, postage prepaid, within ten days after the first publication or posting of the notice under Subsection (3)(a) to each owner of property to be assessed within the proposed assessment area at the property owner's mailing address.

Section 3. Section **11-42-203** is amended to read:

11-42-203. Protests.

(1) An owner of property that is proposed to be [~~included~~] assessed within an assessment area may, within the time specified in the notice under Section 11-42-202, file a written protest against:

- (a) the designation of the assessment area;
- (b) the inclusion of the owner's property in the proposed assessment area;
- (c) the proposed improvements to be acquired or constructed; or
- (d) any other aspect of the proposed designation of an assessment area.

(2) Each protest under Subsection (1)(a) shall describe or otherwise identify the property owned by the person filing the protest.

(3) An owner may withdraw a protest at any time before the conclusion of the hearing under Section 11-42-204 by filing a written withdrawal with the governing body.

(4) If the governing body intends to assess property within the proposed assessment area by type of improvement or by zone, the governing body shall, in determining whether adequate protests have been filed, aggregate the protests by the type of improvement or by zone.

(5) The failure of an owner of property within the proposed assessment area to file a timely written protest constitutes a waiver of any objection to:

- (a) the designation of the assessment area;
- (b) any improvement to be provided to property within the assessment area; and
- (c) the inclusion of the owner's property within the assessment area.

Section 4. Section **11-42-205** is amended to read:

11-42-205. Unimproved property.

(1) ~~[A]~~ (a) Before a local entity may ~~[not]~~ designate an assessment area in which more than 75% of the property proposed to be assessed consists of unimproved property ~~[unless]~~, the local entity~~[-]~~ shall obtain:

~~[(a) has obtained]~~

(i) an appraisal:

(A) of the unimproved property;

(B) from an appraiser who is a member of the Appraisal Institute[;];

(C) addressed to the local entity or a financial institution; and

(D) verifying that the market value of the property, after completion of the proposed improvements, is at least three times the amount of the ~~[assessment]~~ assessments proposed to be levied against the unimproved property; or

~~[(b) has obtained from each owner of unimproved property:]~~

(ii) the most recent taxable value of the unimproved property from the assessor of the county in which the unimproved property is located, verifying that the taxable value of the property, after completion of the proposed improvements, is at least three times the amount of the assessments proposed to be levied against the unimproved property.

(b) If the owner of the unimproved property has entered into a construction loan acceptable to the local entity to finance the facilities to be constructed or installed on the unimproved property, the market value of the unimproved property, as determined under Subsection (1)(a)(i), may include, at the local entity's option:

(i) the principal amount of the construction loan; or

(ii) the value of the unimproved property with the facilities to be financed by the construction loan, as determined by an appraisal of:

(A) the unimproved property; and

(B) the facilities proposed to be constructed.

(2) With respect to the designation of an assessment area described in Subsection (1)(a), the local entity may require:

~~[(i)]~~ (a) financial information acceptable to the governing body ~~[demonstrating]~~ with respect to the owner's ability to pay the proposed ~~[assessment; or]~~ assessments

[~~(ii)~~] (b) a financial institution's commitment securing, to the governing body's satisfaction, the [~~owner's~~] owners' obligation to pay the proposed [~~assessment; and~~] assessments; or

(c) [~~has prepared~~] a development plan, approved by a qualified, independent third party, describing the plan of development and the financial feasibility of the plan, taking into account growth trends, absorption studies, and other demographic information applicable to the unimproved property.

[~~(2)~~] (3) Information that an owner provides to a local entity under Subsection [~~(1)(b)(i)~~] (2)(a) is not a record for purposes of Title 63, Chapter 2, Government Records Access and Management Act.

Section 5. Section **11-42-207** is amended to read:

11-42-207. Adding property to an assessment area.

(1) A local entity may add to a designated assessment area property to be benefitted and assessed if[~~:(a) construction of the improvements in the assessment area has not been completed; and (b)~~] the governing body:

[~~(i)~~] (a) finds that the inclusion of the property will not adversely affect the owners of property already in the assessment area;

[~~(ii)~~] (b) obtains from each owner of property to be added and benefitted a written consent that contains:

[~~(A)~~] (i) the owner's consent to:

[~~(B)~~] (A) the owner's property being added to the assessment area; and

[~~(C)~~] (B) the making of the proposed improvements with respect to the owner's property;

[~~(D)~~] (ii) the legal description and tax identification number of the property to be added; and

[~~(E)~~] (iii) the owner's waiver of any right to protest the creation of the assessment area;

[~~(F)~~] (c) amends the designation resolution or ordinance to include the added property; and

[~~(iv)~~] (d) within 15 days after amending the designation resolution or ordinance:

[~~(G)~~] (i) records in the office of the recorder of the county in which the added property is located the original or certified copy of the amended designation resolution or ordinance

containing the legal description and tax identification number of each additional parcel of property added to the assessment area and proposed to be assessed; and

~~[(B)]~~ (ii) gives written notice to the property owner of the inclusion of the owner's property in the assessment area.

(2) The failure of a local entity's governing body to comply with the requirement of Subsection (1)~~[(b)(iv)]~~(d) does not affect the validity of the amended designation resolution or ordinance.

(3) Except as provided in this section, a local entity may not add to an assessment area ~~[land]~~ property not included in a notice under Section 11-42-202, or provide for making improvements that are not stated in the notice, unless the local entity gives notice as provided in Section 11-42-202 and holds a hearing as required under Section 11-42-204 as to the added ~~[land]~~ property or additional improvements.

Section 6. Section **11-42-301** is amended to read:

11-42-301. Improvements made only under contract let to lowest responsive, responsible bidder -- Publishing notice -- Sealed bids -- Procedure -- Exceptions to contract requirement.

(1) Except as otherwise provided in this section, a local entity may make improvements in an assessment area only under contract let to the lowest responsive, responsible bidder for the kind of service, material, or form of construction that the local entity's governing body determines in compliance with any applicable local entity ordinances.

(2) A local entity may:

(a) divide improvements into parts;

(b) (i) let separate contracts for each part; or

(ii) combine multiple parts into the same contract; and

(c) let a contract on a unit basis.

(3) (a) A local entity may not let a contract until after publishing notice as provided in Subsection (3)(b) at least one time in a newspaper of general circulation within the boundaries of the local entity at least 15 days before the date specified for receipt of bids.

(b) Each notice under Subsection (3)(a) shall notify contractors that the local entity will receive sealed bids at a specified time and place for the construction of the improvements.

(c) Notwithstanding a local entity's failure, through inadvertence or oversight, to

publish the notice or to publish the notice within 15 days before the date specified for receipt of bids, the governing body may proceed to let a contract for the improvements if the local entity receives at least three sealed and bona fide bids from contractors by the time specified for the receipt of bids.

(d) A local entity may publish a notice required under this Subsection (3) at the same time as a notice under Section 11-42-202.

(4) (a) A local entity may accept as a sealed bid a bid that is:

(i) manually sealed and submitted; or

(ii) electronically sealed and submitted.

(b) The governing body or project engineer shall, at the time specified in the notice under Subsection (3), open and examine the bids.

(c) In open session, the governing body:

(i) shall declare the bids; and

(ii) may reject any or all bids if the governing body considers the rejection to be for the public good.

(d) The local entity may award the contract to the lowest responsive, responsible bidder even if the price bid by that bidder exceeds the estimated costs as determined by the project engineer.

(e) A local entity may in any case:

(i) refuse to award a contract;

(ii) obtain new bids after giving a new notice under Subsection (3);

(iii) determine to abandon the assessment area; or

(iv) not make some of the improvements proposed to be made.

(5) A local entity is not required to let a contract as provided in this section for:

(a) an improvement or part of an improvement the cost of which or the making of which is donated or contributed;

(b) an improvement that consists of furnishing utility service or maintaining improvements;

(c) labor, materials, or equipment supplied by the local entity;

(d) the local entity's acquisition of completed or partially completed improvements in an assessment area;

(e) design, engineering, and inspection costs incurred with respect to the construction of improvements in an assessment area; or

(f) additional work performed in accordance with the terms of a contract duly let to the lowest responsive, responsible bidder.

(6) A local entity may itself furnish utility service and maintain improvements within an assessment area.

(7) (a) A local entity may acquire completed or partially completed improvements in an assessment area, but may not pay an amount for those improvements that exceeds their fair market value.

(b) Upon the local entity's payment for completed or partially completed improvements, title to the improvements shall be conveyed to the local entity or another public agency.

(8) The provisions of Title 11, Chapter 39, Building Improvements and Public Works Projects, and Section 72-6-108 do not apply to improvements to be constructed in an assessment area.

Section 7. Section **11-42-401** is amended to read:

11-42-401. Levying an assessment -- Prerequisites -- Assessment list.

(1) A local entity may levy an assessment against property within an assessment area as provided in this part.

(2) Before a governing body may adopt a resolution or ordinance levying an assessment against property within an assessment area:

(a) the governing body shall:

(i) subject to Subsection (3), prepare an assessment list designating:

(A) each parcel of property proposed to be assessed; and

(B) the amount of the assessment to be levied against the property;

(ii) appoint a board of equalization as provided in Section 11-42-403; and

(iii) give notice as provided in Section 11-42-402; and

(b) the board of equalization, appointed under Section 11-42-403, shall hold hearings, make any corrections to assessments it considers appropriate, and report its findings to the governing body as provided in Section 11-42-403.

(3) An assessment list under Subsection (2)(a)(i) may be prepared at any time after:

493 (a) the estimated or actual operation and maintenance costs have been determined, if
494 the assessment is to pay operation and maintenance costs;

495 (b) the light service has commenced, if the assessment is to pay for light service;

496 (c) the park maintenance has commenced, if the assessment is to pay for park
497 maintenance;

498 (d) adoption of a resolution or ordinance under Section 11-42-206, if the assessment is
499 to pay for economic promotion activities; or

500 (e) for any other assessment, the governing body has determined:

501 (i) the estimated or actual acquisition and construction costs of all proposed
502 improvements within the assessment area, including overhead costs and authorized
503 contingencies;

504 (ii) the estimated or actual property price for all property to be acquired to provide the
505 proposed improvements; and

506 (iii) the reasonable cost of any work to be done by the local entity.

507 (4) A local entity may levy an assessment for some or all of the cost of improvements
508 within an assessment area, including payment of:

509 (a) operation and maintenance costs of improvements constructed within the
510 assessment area;

511 (b) the actual cost that the local entity pays for utility services furnished or for
512 maintenance of improvements provided by another or, if the local entity itself furnishes utility
513 service or maintains improvements, for the reasonable cost of supplying the service or
514 maintenance;

515 (c) the reasonable cost of supplying labor, materials, or equipment in connection with
516 improvements; and

517 (d) the reasonable cost of connection fees or the cost of any sewer, storm drainage,
518 water, gas, electric, or [~~telecommunications~~] communications connections if the local entity
519 owns or supplies these services, to the depth that the local entity's governing body considers
520 just and equitable.

521 (5) A local entity may not levy an assessment for an amount donated or contributed for
522 an improvement or part of an improvement.

523 (6) The validity of an otherwise valid assessment is not affected because the actual cost

of improvements exceeds the estimated cost.

(7) An assessment levied to pay for operation and maintenance costs may not be levied over a period of time exceeding the reasonable useful life of the facilities to be maintained by the levy.

Section 8. Section **11-42-403** is amended to read:

11-42-403. Board of equalization -- Hearings -- Corrections to proposed assessment list -- Report to governing body -- Appeal -- Board findings final -- Waiver of objections.

(1) After preparing an assessment list under Subsection 11-42-401(2)(a)(i), the governing body shall appoint a board of equalization.

(2) Each board of equalization under this section shall, at the option of the governing body, consist of:

(a) three or more members of the governing body;

(b) (i) two members of the governing body; and

(ii) (A) a representative of the treasurer's office of the local entity; or

(B) a representative of the office of the local entity's engineer or the project engineer;

or

(c) (i) (A) one member of the governing body; or

(B) a representative of the governing body, whether or not a member of the governing body, appointed by the governing body;

(ii) a representative of the treasurer's office of the local entity; and

(iii) a representative of the office of the local entity's engineer or the project engineer.

(3) (a) The board of equalization shall hold hearings on at least three consecutive days for at least one hour per day between 9 a.m. and 9 p.m., as specified in the notice under Section 11-42-402.

(b) The board of equalization may continue a hearing from time to time to a specific place and a specific hour and day until the board's work is completed.

(c) At each hearing, the board of equalization shall hear arguments from any person who claims to be aggrieved, including arguments relating to:

(i) the direct or indirect benefits accruing to a tract, block, lot, or parcel of property in the assessment area; or

(ii) the amount of the proposed assessment against the tract, block, lot, or parcel.

(4) (a) After the hearings under Subsection (3) are completed, the board of equalization shall:

(i) consider all facts and arguments presented at the hearings; and

(ii) make any corrections to the proposed assessment list that the board considers just and equitable.

(b) A correction under Subsection (4)(a)(ii) may:

(i) eliminate one or more pieces of property from the assessment list; or

(ii) increase or decrease the amount of the assessment proposed to be levied against a parcel of property.

(c) (i) If the board of equalization makes a correction under Subsection (4)(a)(ii) that results in an increase of a proposed assessment, the board shall, before approving a corrected assessment list:

(A) give notice as provided in Subsection (4)(c)(ii);

(B) hold a hearing at which the owner whose assessment is proposed to be increased may appear and object to the proposed increase; and

(C) after holding a hearing, make any further corrections that the board considers just and equitable with respect to the proposed increased assessment.

(ii) Each notice required under Subsection (4)(c)(i)(A) shall:

(A) state:

(I) that the property owner's assessment is proposed to be increased;

(II) the amount of the proposed increased assessment;

(III) that a hearing will be held at which the owner may appear and object to the increase; and

(IV) the date, time, and place of the hearing; and

(B) be mailed, at least 15 days before the date of the hearing, to each owner of property as to which the assessment is proposed to be increased at the property owner's mailing address.

(5) (a) After the board of equalization has held all hearings required by this section and has made all corrections the board considers just and equitable, the board shall report to the governing body its findings that:

(i) each parcel of property within the assessment area will be directly or indirectly

benefitted in an amount not less than the assessment to be levied against the property; and

(ii) except as provided in Subsection 11-42-409(6), no parcel of property on the assessment list will bear more than its proportionate share of the cost of the improvements benefitting the property.

(b) The board of equalization shall, within ten days after submitting its report to the governing body, mail a copy of the board's final report to each property owner who objected at the board hearings to the assessment proposed to be levied against the property owner's property at the property owner's mailing address.

(6) (a) If a board of equalization includes members other than the governing body of the local entity, a property owner may appeal a decision of the board to the governing body by filing with the governing body a written notice of appeal within 15 days after the board's final report is mailed to property owners under Subsection (5)(b).

(b) Except as provided in Subsection (6)(a), no appeal may be taken from the findings of a board of equalization.

(7) The findings of a board of equalization are final:

(a) when approved by the governing body, if no appeal is allowed under Subsection (6); or

(b) after the time for appeal under Subsection (6) is passed, if an appeal is allowed under that subsection.

(8) (a) If a governing body has levied an assessment to pay operation and maintenance costs within an assessment area, the governing body may periodically appoint a new board of equalization to review assessments for operation and maintenance costs.

(b) Each board of equalization appointed under Subsection (8)(a) shall comply with the requirements of Subsections (3) through (6).

(9) The failure of an owner of property within the assessment area to appear before the board of equalization to object to the levy of the assessment constitutes a waiver of all objections to the levy, except an objection that the governing body failed to obtain jurisdiction to order that the improvements which the assessment is intended to pay be provided to the assessment area.

Section 9. Section **11-42-404** is amended to read:

11-42-404. Adoption of a resolution or ordinance levying an assessment -- Notice

617 **of the adoption -- Effective date of resolution or ordinance -- Notice of assessment**
618 **interest.**

619 (1) (a) After receiving a final report from a board of equalization under Subsection
620 11-42-403(5) or, if applicable, after the time for filing an appeal under Subsection
621 11-42-403(6) has passed, the governing body may adopt a resolution or ordinance levying an
622 assessment against benefitted property within the assessment area.

623 (b) Each local entity that levies an assessment under this chapter shall levy the
624 assessment at one time only, unless the assessment is to pay operation and maintenance costs
625 or the costs of economic promotion activities.

626 (c) An assessment resolution or ordinance adopted under Subsection (1)(a):

627 (i) need not describe each tract, block, lot, part of block or lot, or parcel of property to
628 be assessed;

629 (ii) need not include the legal description or tax identification number of the parcels of
630 property assessed in the assessment area; and

631 (iii) is adequate for purposes of identifying the property to be assessed within the
632 assessment area if the assessment resolution or ordinance incorporates by reference the
633 corrected assessment list that describes the property assessed by legal description and tax
634 identification number.

635 (2) (a) Each local entity that adopts an assessment resolution or ordinance shall give
636 notice of the adoption by:

637 (i) publishing a copy of the resolution or ordinance, or a summary of the resolution or
638 ordinance, once in a newspaper of general circulation within the local entity's jurisdictional
639 boundaries; or

640 (ii) if there is no newspaper of general circulation with the local entity's jurisdictional
641 boundaries, posting a copy of the resolution or ordinance in at least three public places within
642 the local entity's jurisdictional boundaries for at least 21 days.

643 (b) No other publication or posting of the resolution or ordinance is required.

644 (3) Notwithstanding any other statutory provision regarding the effective date of a
645 resolution or ordinance, each assessment resolution or ordinance takes effect:

646 (a) on the date of publication or posting of the notice under Subsection (2); or

647 (b) at a later date provided in the resolution or ordinance.

(4) (a) The governing body of each local entity that has adopted an assessment resolution or ordinance under Subsection (1) shall, within five days after the 25-day prepayment period under Subsection 11-42-411(6) has passed, file a notice of assessment interest with the recorder of the county in which the assessed property is located.

(b) Each notice of assessment interest under Subsection (4)(a) shall:

- (i) state that the local entity has an assessment interest in the assessed property;
- (ii) if the assessment is to pay operation and maintenance costs or for economic promotion activities, state the maximum number of years over which an assessment will be payable; and
- (iii) describe the property assessed by legal description and tax identification number.

(c) A local entity's failure to file a notice of assessment interest under this Subsection (4) has no effect on the validity of an assessment levied under an assessment resolution or ordinance adopted under Subsection (1).

Section 10. Section **11-42-410** is amended to read:

11-42-410. Amending an assessment resolution or ordinance.

(1) A governing body may adopt a resolution or ordinance amending the original assessment resolution or ordinance adopted under Section 11-42-404 to:

- (a) correct a deficiency, omission, error, or mistake:
 - (i) with respect to:
 - (A) the total cost of an improvement;
 - (B) operation and maintenance costs; or
 - (C) the cost of economic promotion activities; or
 - (ii) that results in a tract, lot, block, or parcel not being fully assessed or assessed in an incorrect amount;

- (b) reallocate or adjust assessments under the original assessment resolution or ordinance for operation and maintenance costs or the costs of economic promotion activities;

- (c) reallocate or adjust assessments under the original assessment resolution or ordinance; or

- (d) reduce an assessment as a result of the issuance of refunding bonds.

(2) If an amendment under Subsection (1)(a) or (c) results in an increase in an assessment for any property owner, the governing body shall comply with the notice

requirements of Section 11-42-402, unless the owner waives notice as provided in Section 11-42-104.

Section 11. Section **11-42-602** is amended to read:

11-42-602. Bond anticipation notes.

(1) A local entity may by resolution authorize the issuance of bond anticipation notes.

(2) A local entity may use the proceeds from the issuance of bond anticipation notes to pay:

(a) the estimated acquisition and contract price;

(b) the property price; ~~and~~

(c) capitalized interest; and

~~[(c)]~~ (d) related costs, including overhead costs.

(3) Each resolution authorizing the issuance of bond anticipation notes shall:

(a) describe the bonds in anticipation of which the bond anticipation notes are to be issued;

(b) specify the principal amount and maturity dates of the notes; and

(c) specify the interest rate applicable to the notes.

(4) (a) The interest rate on bond anticipation notes issued under this section may be fixed, variable, or a combination of fixed and variable, as determined by the governing body.

(b) If bond anticipation notes carry a variable interest rate, the governing body shall specify the basis upon which the rate is to be determined, the manner in which the rate is to be adjusted, and a maximum interest rate.

(c) A local entity may provide for interest on bond anticipation notes to be paid semiannually, annually, or at maturity.

(5) A local entity may:

(a) issue and sell bond anticipation notes in a manner and at a price, either at, below, or above face value, as the governing body determines by resolution; and

(b) make bond anticipation notes redeemable prior to maturity, at the governing body's option and in the manner and upon the terms fixed by the resolution authorizing their issuance.

(6) Bond anticipation notes shall be executed, be in a form, and have details and terms as provided in the resolution authorizing their issuance.

(7) A local entity may issue bond anticipation notes to refund bond anticipation notes

previously issued by the local entity.

(8) A local entity may include interest accruing on bond anticipation notes in the cost of improvements in an assessment area.

Section 12. Section **11-42-603** is amended to read:

11-42-603. Sources of payment for interim warrants and bond anticipation notes.

Each local entity that has issued interim warrants or bond anticipation notes shall pay the warrants or notes from:

(1) proceeds from the sale of assessment bonds;

(2) cash the local entity receives from the payment for improvements;

(3) assessments;

~~[(3)]~~ (4) improvement revenues that are not pledged to the payment of assessment bonds;

~~[(4)]~~ (5) proceeds from the sale of interim warrants or bond anticipation notes; or

~~[(5)]~~ (6) the local entity's guaranty fund or, if applicable, the reserve fund.

Section 13. Section **11-42-605** is amended to read:

11-42-605. Local entity may authorize the issuance of assessment bonds -- Limit on amount of bonds -- Features of assessment bonds.

(1) After the 25-day prepayment period under Subsection 11-42-411(6) has passed or, if the 25-day prepayment period is waived under Section 11-42-104, after the assessment resolution or ordinance takes effect, a local entity may authorize the issuance of bonds to pay the costs of improvements in an assessment area, and other related costs, against the funds that the local entity will receive because of an assessment in an assessment area.

(2) The aggregate principal amount of bonds authorized under Subsection (1) may not exceed the unpaid balance of assessments at the end of the 25-day prepayment period under Subsection 11-42-411(5).

(3) Assessment bonds issued under this section:

(a) are fully negotiable for all purposes;

(b) shall mature at a time that does not exceed the period that installments of assessments in the assessment area are due and payable, plus one year;

(c) shall bear interest at the lowest rate or rates reasonably obtainable;

(d) may not be dated earlier than the effective date of the assessment ordinance;

(e) shall be payable at the place, shall be in the form, and shall be sold in the manner and with the details that are provided in the resolution authorizing the issuance of the bonds;

(f) shall be issued~~[, as the governing body determines: (i) in bearer form, with or without interest coupons attached; or (ii)]~~ in registered form as provided in Title 15, Chapter 7, Registered Public Obligations Act; and

(g) provide that interest be paid semiannually, annually, or at another interval as specified by the governing body.

(4) (a) A local entity may:

(i) (A) provide that assessment bonds be callable for redemption before maturity; and

(B) fix the terms and conditions of redemption, including the notice to be given and any premium to be paid;

(ii) subject to Subsection (4)(b), require assessment bonds to bear interest at a fixed or variable rate, or a combination of fixed and variable rates;

(iii) specify terms and conditions under which:

(A) assessment bonds bearing interest at a variable interest rate may be converted to bear interest at a fixed interest rate; and

(B) the local entity agrees to repurchase the bonds; ~~and~~

(iv) engage a remarketing agent and indexing agent, subject to the terms and conditions that the governing body agrees to; and

(v) include all costs associated with assessment bonds, including any costs resulting from any of the actions the local entity is authorized to take under this section, in an assessment levied under Section 11-42-401.

(b) If assessment bonds carry a variable interest rate, the local entity shall specify:

(i) the basis upon which the variable rate is to be determined over the life of the bonds;

(ii) the manner in which and schedule upon which the rate is to be adjusted; and

(iii) a maximum rate that the bonds may carry.

(5) (a) Nothing in this part may be construed to authorize the issuance of assessment bonds to pay for the cost of ordinary repairs to pavement, sewers, drains, curbing, gutters, or sidewalks.

(b) Notwithstanding Subsection (5)(a), a local entity may issue assessment bonds to pay for extraordinary repairs to pavement, sewers, drains, curbing, gutters, or sidewalk.

(c) A local entity's governing body may define by resolution or ordinance what constitutes ordinary repairs and extraordinary repairs for purposes of this Subsection (5).

(d) Nothing in this Subsection (5) may be construed to limit a local entity from levying an assessment within an assessment area to pay operation and maintenance costs as described in a notice under Section 11-42-402.

(6) If a local entity has issued interim warrants under Section 11-42-601 or bond anticipation notes under Section 11-42-602 in anticipation of assessment bonds that the local entity issues under this part, the local entity shall provide for the retirement of the interim warrants or bond anticipation notes contemporaneously with the issuance of the assessment bonds.

Section 14. Section **11-42-702** is amended to read:

11-42-702. Reserve fund.

(1) In lieu of creating and funding a guaranty fund under Section 11-42-701 for an issue of assessment bonds or refunding assessment bonds, a local entity may establish a reserve fund to secure the issue.

(2) If a local entity establishes a reserve fund under this section:

(a) the bonds secured by the reserve fund are not secured by a guaranty fund under Section 11-42-701;

(b) the local entity is not required to fund a guaranty fund under Section 11-42-701 for those bonds; and

(c) unless otherwise provided in this part or in the proceedings authorizing the issuance of bonds, the provisions of this part regarding a guaranty fund have no application to the bonds that are secured by the reserve fund.

(3) Each local entity that establishes a reserve fund shall:

(a) fund and replenish the reserve fund in the amounts and manner provided in the proceedings authorizing the issuance of the bonds that are secured by the reserve fund; and

(b) invest the funds on deposit in the reserve fund as provided in Title 51, Chapter 7, State Money Management Act.

(4) (a) Subject to Subsection (4)(b), a local entity may replenish a reserve fund under this section by any of the methods described in Subsection 11-42-701(1)(b).

(b) The proceedings authorizing the issuance of assessment bonds or refunding

803 assessment bonds shall provide that if a local entity uses any of the methods described in
804 Subsection 11-42-701(1)(b) to replenish a reserve fund, the local entity shall be reimbursed,
805 with interest at a rate that the local entity determines, with money that the local entity receives
806 from foreclosing on delinquent property.

807 (5) Upon the retirement of bonds secured by a reserve fund, the local entity shall:

808 (a) terminate the reserve fund; and

809 (b) disburse all remaining money in the fund as provided in the proceedings

810 authorizing the issuance of the bonds.

Legislative Review Note

as of 2-15-08 7:32 AM

Office of Legislative Research and General Counsel

H.B. 453 - Assessment Area Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
